(2)

No. 91-952

Supreme Court, U.S.
FILED
JAN 15 1992
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1991

FEDERAL COMMUNICATIONS COMMISSION,

Petitioner,

vs.

ACTION FOR CHILDREN'S TELEVISION, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF AMICUS CURIAE NATIONAL FAMILY LEGAL FOUNDATION IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

LEN L. MUNSIL
5353 North 16th Street
Suite 400
Phoenix, Arizona 85016
(602) 265-1513

Counsel of Record
Amicus Curiae

53

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE	iii
INTEREST OF THE AMICUS CURIAE	1
INTRODUCTION	3
ARGUMENT	6
CONCLUSION	16
CERTIFICATE OF SERVICE	18

TABLE OF AUTHORITIES

CASES — Pages

Action for Children's Television v. Federal Communications Commission ("A.C.T. I"), 852 F.2d 1332 (D.C.Cir. 1988). 10, 11

Butler v. Michigan, 352 U.S. 380 (1957) 15

Federal Communications Commission v. Pacifica, 438 U.S. 726 (1978). 7, 9, 10, 14, 15

Sable Communications v. Federal Communications Commission, 106 L.Ed.2d 93 (1989). 10, 13

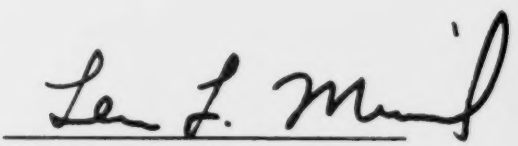
STATUTES

18 U.S.C. § 1464. . . . . 6, 10

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

National Family Legal Foundation respectfully moves for leave to file the attached brief amicus curiae. Counsel of record for Petitioner and Respondents have consented in writing to the filing of this brief.

Respectfully submitted,



LEN L. MUNSIL
Counsel for Amicus Curiae
5353 North 16th Street
Suite 400
Phoenix, Arizona 85016
(602) 265-1513

INTEREST OF THE AMICUS CURIAE

National Family Legal Foundation is a nonprofit, public interest corporation that seeks to preserve the integrity of families and the innocence of children by promoting a healthy and safe environment, free from pornography and the sexual crimes which invariably accompany its widespread availability. NFLF provides legal assistance to individuals, organizations, prosecutors and other public officials concerned about the harmful impact of pornography on the quality of life.

NFLF founder Alan E. Sears was the Executive Director of the Attorney General's Commission on Pornography. In its 1986 Final Report, the Commission discussed the harms caused by the proliferation of sexual images in our society, and warned against the dangers of exposing children and unconsenting adults to pornography. Mr. Sears and the Foundation have been active in urging the

Federal Communications Commission to enforce its prohibition of indecent broadcasts. Former Attorney General Edwin Meese III, who presented the 1986 Commission report, continues to support enforcing constitutional laws restricting various forms of pornography by serving as an active member of the Board of Directors for amicus National Family Legal Foundation.

NFLF is concerned that the decision of the D.C. Circuit mandating that certain hours of the day be reserved for indecent broadcasts will significantly increase the exposure of children and unconsenting adults to offensive pornography and profanity. NFLF believes strongly that the decision is inconsistent with prior Supreme Court indecency cases, and is not required by the First Amendment to the United States Constitution. NFLF hopes that broadcast TV and radio airwaves will remain clean, and therefore accessible and available to families and children, as they have been since the Golden Age of broadcasting.

INTRODUCTION

If the decision of the United States Court of Appeals for the District of Columbia Circuit stands, American TV and radio broadcasts will never be the same. For more than 60 years, this simple limitation has been known and accepted -- you don't talk dirty on radio and broadcast television. You can talk dirty on the street corner, in the locker room, in the movies, on record albums, and lately, even on the telephone and cable TV. But Americans have always known they could turn on the television in their living room with the children present, or flip the radio dial in the family car, without fear of being assaulted by a stream of expletives fit for a roomful of sailors. Now we are told by the D.C. Circuit that a decent family's final media refuge is required by our laws and the Constitution to permit "patently offensive depictions or descriptions of sex

or excretory functions" during certain hours of the day. In the age of trash television, where it seems every program (even the news) is designed to titillate, shock or repulse, can we doubt that broadcasts featuring full nudity of both sexes, scenes of simulated sexual intercourse complete with moaning and heavy breathing, bathroom humor, and use of "bullsh--" and "fu--", will soon be commonplace? If the FCC can draw the line only at obscenity during some time periods, is there any doubt that TV and radio executives will push right up to the edge of illegal hard-core pornography in search of higher ratings? Is this where public, family-oriented television and radio ends?

The Supreme Court should hear this case and reverse the D.C. Circuit in order to preserve broadcast television and radio as media that are available to all Americans. If television and radio continue their slide into grotesque and offensive depravity, unchecked by any sense of community standards and ignoring the consensus developed over many

years as to what is appropriate to be seen and heard on the public airwaves, concerned and responsible American families will have to make a choice: Do we allow ourselves to be assaulted in our own homes every night by graphic sex, profanity and violence, or must we turn the TV and radio off and completely give up America's primary forms of entertainment, and also our main sources for news, information and ideas from around the country and even around the world? Either way, the families of America lose.

ARGUMENT

American society has suffered a serious decline in civility over the past several decades. Common courtesy and decency seem to be relics of a previous generation. This decline can be seen in everything from minor traffic altercations that end with gunfire, to profane bumper stickers, to stadiums full of sports fans shouting vulgar slogans in unison at the officials. It is not so much that the rules of civilized conduct have changed, as it is that many members of society seem unwilling to acknowledge that any such rules exist.

There is at least one place where such rules have always existed, and that is the publicly owned radio and television broadcast airwaves. Title 18 U.S.C. § 1464 provides that "Whoever utters any obscene, indecent or profane language by means of radio communications shall be fined not more than $10,000 or imprisoned not more than

two years, or both." This prohibition against obscene, indecent or profane language originally appeared in the Radio Act of 1927, and has been part of federal law ever since. The language is straightforward, with no suggestion that indecent or profane speech over the airwaves is acceptable at certain hours of the day.

In *Federal Communications Commission v. Pacifica*, 438 U.S. 726 (1978), this Court upheld the FCC's authority to sanction a radio station for broadcasting many of the same profane words now heard regularly on broadcast television, as is documented in the appendices to this brief. Of course, the free speech absolutists argued then that we would never be where we are now, but this Court knew better: "We are assured by Pacifica that the free play of market forces will discourage indecent programming ... the prosperity of those who traffic in pornographic literature and films would appear to justify skepticism." 438 U.S. 744, n.19. Indeed.

The TV networks, and the ACLU and its front groups[1] will probably argue now that prime-time nudity and soft-core pornography are not the wave of the future. But already TV and radio stations are taking advantage of confusion in this area of the law. That confusion is exacerbated by judicial decisions such as the one on appeal here, decisions which refuse to take account of the rationale behind *Pacifica*. Television and radio stations have shattered one taboo after another in their search for higher ratings. We have assembled only a few examples in our appendices, but a quick glance indicates how far indecency has come in the last few years.

No one seriously argues that the government does

---

[1]"Action for Children's Television" sounds better on the front end of a lawsuit than "the American Civil Liberties Union", but we have some difficulty understanding what interest children have in making patently offensive depictions of sex or excretory functions available to adults on television. Or perhaps they want children to have access to indecent programming?

not have a compelling interest in protecting children from indecent broadcasts. In an age where teen pregnancy and sexually transmitted diseases are at epidemic proportions, does it really make sense to show unedited in prime time an R–rated movie like "Private Lessons," (See Appendix "B"), in which an actress who formerly starred in a series of pornographic films spends most of the movie nude in front of the camera as she pursues a sexual relationship with a 15–year–old boy? Does it make sense to allow morning radio show hosts to entertain children preparing for school with discussions of masturbation, orgasm and penis jokes? (See Appendices "D" – "G") Does it make sense to allow PBS to broadcast nationally a documentary by black homosexuals that contains nudity and frequent uses of various permutations of the "F–word"? (See Appendix "A")

Of course not. And this Court has always recognized that the state's interest in protecting children from this type of material is compelling. *Pacifica*, 438 U.S.

749–50; *Sable Communications v. Federal Communications Commission,* 106 L.Ed.2d 93, 105 (1989). Nor can there be any real question that the types of broadcasts now occurring are "indecent" within the meaning of 18 U.S.C. § 1464. *Pacifica,* 438 U.S. 741, n.16 (nudity and "4–letter words" may be protected speech and not obscene, but their broadcast might still violate the statute). So the question is whether the means of restricting the exposure of children and unconsenting adults is "narrowly drawn" to effectuate the state's compelling purpose "without unnecessarily interfering with First Amendment freedoms." *Sable,* 106 L.Ed.2d at 105. The D.C. Circuit, without even discussing the evidence compiled by the FCC, held that banning the broadcast of indecent material was not a sufficiently narrow approach to survive First Amendment scrutiny. The court, relying on its previous decision in *Action for Children's Television v. Federal Communications Commission ("A.C.T.*

I"), 852 F.2d 1332 (D.C.Cir. 1988), summarily concluded that its holding "that the Commission must identify some reasonable period of time during which indecent material may be broadcast necessarily means that the Commission may not ban such broadcasts entirely." But the evidence shows that a 24–hour prohibition on indecent broadcasts is the only means by which significant numbers of children and unconsenting adults can be protected from indecent, patently offensive broadcasts.

In its August 6, 1990 report, which was not available to the panel that decided the *"A.C.T. I"* case, the FCC examined the evidence regarding TV viewing and radio listening habits for teenagers. The FCC determined that "there is a reasonable risk that significant numbers of children are in the audience for radio and television broadcasts at all times of the day and night." (¶ 65). Regarding radio listening, evidence before the FCC indicated that "in all time frames measured, a higher

percentage of all children between the ages of 12 and 17 listen to radio than the percentage of all adults age 18 and over, even between midnight and 6 a.m.", and estimated that 716,000 teenagers were listening during any time period between midnight and 6 a.m. (*Id.*) Regarding television viewing, the FCC stated in ¶ 66:

> [A]vailable data show that children, particularly those between the ages of 12 and 17, are in the viewing audience until the last time period reported for television ratings. The data further show that as high a percentage of children ages 12 to 17 as adults watch television during the late evening hours. Indeed, for the 1:45 to 2:00 a.m. time period, one commenter has estimated that there are over 970,000 12 to 17 year olds in the television audience. These figures, of course, do not take into consideration the number of children who may be using VCRs between midnight to 6 a.m. to record television programs for viewing at a later time.

If the concerns for children articulated in *Pacifica* and *Sable* are to be taken seriously, then the FCC clearly has made the case that a complete prohibition of broadcast indecency is the most narrowly tailored means of achieving the government's compelling interest. In *Sable*, this Court

invalidated the ban on indecent telephone messages for one reason -- there was no evidence to support the assertion that less restrictive means of limiting children's access would be unsuccessful:

> For all we know from this record, the FCC's technological approach to restricting dial-a-porn messages to adults who seek them would be extremely effective, and only a few of the most enterprising and disobedient young people will manage to secure access to such messages. If this is the case, it seems to us that section 223(b) is not a narrowly tailored effort to serve the compelling interest of preventing minors from being exposed to indecent telephone messages.

106 L.Ed.2d at 108.

The FCC's conclusion that nearly 1.7 million teenagers watch or listen to television or radio broadcasts during any so-called "safe harbor" time period -- whether it starts at 8 p.m., 10 p.m. or midnight -- proves only that

the D.C. Circuit's "safe harbor" is a mirage.[2] Surely this Court does not consider 1.7 million teenagers to be "only a few of the most enterprising and disobedient young people"? But that will be the result if this Court allows the D.C. Circuit's decision to stand. More than a million impressionable teenagers and preteens will be exposed each night to soft–core pornography, vulgarity and profanity.

The D.C. Circuit violates this Court's precedent in one other significant way. The decision departs from the *Pacifica* rationale for limiting indecent broadcasts by completely ignoring the interests of unconsenting adults. *Pacifica* clearly relied on the right of adults to be free from patently offensive broadcasts while flipping the radio or TV

---

[2]The FCC also received comments from The Pacifica Foundation, et al., which included a brief appendix that, if we read it correctly, shows Arbitron's percentages of children in the public radio audience at various times. Rather than refuting the FCC's numbers, the Arbitron figures, which do not reflect the majority of children who listen to commercial broadcasts, seem only to prove that no one listens to public radio.

dial (or today, the remote control.) Obviously a "safe harbor" for children, even if it were to exist, would be unsafe for unconsenting adults. Apparently the D.C. Circuit believes "the remedy for an assault is to run away after the first blow." *Pacifica*, 438 U.S. at 749.

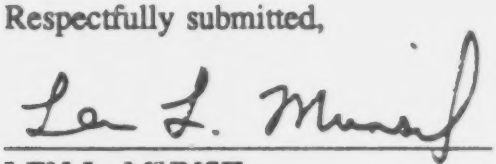
Are there available alternative means for spreading indecent recorded and videotaped messages? The better question is, what other medium does not have indecent messages? As this Court noted in *Pacifica*, those seeking indecency "may purchase tapes and records or go to theaters and nightclubs to hear these words." 438 U.S. at 750, n.28. Video indecency is available on cable or at the neighborhood video store, in adult bookstores, and in movie theaters; spoken or recorded indecency can still be found at the local record store or nightclub, or on the telephone. There is no serious argument that a limitation on broadcast indecency will reduce adults to hearing only what is fit for children. *Butler v. Michigan*, 352 U.S. 380, 383 (1957).

CONCLUSION

Profanity, vulgarity and nudity have existed for hundreds of years, and obviously were around at the birth of radio and television. Yet we have lived in America for decades without allowing patently offensive broadcasts over the public airwaves. Despite the cries of censorship from those who brought this lawsuit, did free speech really suffer for all those years just because you couldn't say "motherf---er" on the radio, or show a striptease in place of the Sunday night movie? The forces of incivility, rudeness, and offensiveness have soiled virtually ever corner of society — can we not leave the public airwaves to decent men and women and families, who are trying despite the odds to raise responsible young citizens in an indecent world? Congress thought so, and this Court's prior cases say so. Only allowing the FCC to prohibit indecent

broadcasts around the clock will settle this area of law and prevent court challenges to the FCC's enforcement decisions from recurring. For the sake of America's families, the National Family Legal Foundation urges this Court to grant certiorari and reverse the decision of the D.C. Circuit.

Respectfully submitted,



LEN L. MUNSIL
5353 North 16th Street
Suite 400
Phoenix, Arizona 85016
(602) 265-1513

Counsel for Amicus Curiae

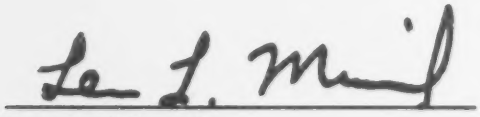
CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Brief of Amicus Curiae National Family Legal Foundation have been sent by U.S. Mail, Postage Prepaid, on this 15th day of January, 1992, to:

Timothy B. Dyk, Esq.
Jones, Day, Reavis & Pogue
1450 G. Street, N.W.
Washington, D.C. 20005–2088

John G. Roberts, Esq.
Office of the Solicitor General
U.S. Department of Justice
Washington, D.C. 20530

All Parties required to be served have been served.



Len L. Munsil
Counsel for Amicus Curiae

Appendix "A"

"TONGUES UNTIED"

These transcripts are taken from a recording of *Tongues Untied*, which aired on KAET–TV in Phoenix, Arizona on Saturday, July 20, 1991, at 11:30 p.m. This controversial hour–long documentary by and about black male homosexuals was broadcast nationally over numerous PBS affiliates on a Saturday night during the summer, when there were unquestionably significant numbers of minors in the audience.

Tongues Untied opens with a naked man jumping and dancing in front of the camera. On several occasions, his genitals are briefly exposed. Later, two graphic and lifelike cartoons depict naked men with erect penises. One of the cartoon men is ejaculating, and ejaculate drips from his body. The program is filled with profanity, including frequent use of words considered indecent in *F.C.C. v. Pacifica*. There are 29 uses of "fuck," "fucked," "fucking" or "motherfucking;" 11 uses of "faggot," 3 uses of "shit," one reference to "ass," one reference to "dick" (meaning penis), and one use of "cum" (meaning ejaculate). That means one of these words was used, on average, nearly every minute of the program.

The following are transcriptions of two brief portions of the broadcast:

(Man narrates story of bus ride.)

> I was riding on the S–2 headed to Silver Spring. The bus, for most of the ride, had been filled with

the quiet murmur of the other passengers. Suddenly from the back of the bus a voice rose and wailed "You my **bitch**." "No, uh,uh, we are **bitches**." I turned around to look at the back of the bus. There were two brothers going at it. "No, you listen here, I ain't wearing lipstick, you are." "I ain't no **bitch**, I **fucked** you, you my **bitch**." This continued without resolution until we arrived at 16th and U street. The bus is packed with passengers by now. As we approach the stop, I see ten more waiting to step aboard. Just as the first person steps aboard a strident, hysterical voice shouts from the back, "I'm a forty-five-year-old black gay man who enjoys taking **dick** in his **rectum**. I'm not your **bitch**, your **bitch** is at home taking care of your kids."

* * *

(Man describes his difficult upbringing.)

Man: I heard my calling by age six. We had a word for boys like me.

Voice: Punk!

Man: Punk. Not because I played sex with other boys. Everybody on the block did that.

Voice: Punk!

Man: But because I didn't mind giving it away. Now other boys traded: "You can have my boody if you give me yours..." "Hmh, mmmmh -- b-but wait a minute now. If I

go first...". "Hmh, mmmmh, you went first last time." "B–but I want to be the daddy...". "Y–you the daddy all the time...". "B–but I want to be the daddy...". "I'm the daddy – – mmmm, mmmm. Mmmm, mmmm." Not me, I gave it up for free.

Voice: Punk!

Man: At age 11, we moved to Georgia. I graduated to new knowledge.

Voice: Homo!

Man: You don't know how to kiss...

Voice: Homo!

Man: my best friend asked? Shocked. I didn't know what to do with a girl when I lost at spin–the–bottle.

Voice: Homo!

Man: "I'll show you," he said, his brown eyes inviting. We practiced kissing for weeks – dry, wet, french – until his older brother called us a name.

Voice: Homo!

Man: "What's a Homo?" I asked.

Voice: Punk! **Faggot**! Freak!

Man: I understood. We stopped kissing. Best friend became worst enemy.

Voice: **Motherfucking coon!**

Voice: Age 12 they bussed me to Hepseba High on the outskirts of Augusta.

Voice: **Motherfucking coon!**

Man: A spray painted sign on the wall greeted me.

Voice: Niggers, go home!

Man: The Rednecks hated me.

Voice: **Motherfucking coon!**

Man: Because I was one of only two blacks placed in AA. The class for Hepseba's best and brightest.

Voice: Niggers, go home!

Man: The blacks hated me.

Voice: Uncle Tom!

Man: Because they assumed my class status made me uppity.

Voice: Uncle Tom!

Man: Assumed my silence as superiority.

Voice: Uncle Tom!

Man: I was shy.

Voice: **Motherfucking coon!**

Voice: Uncle Tom!

Man: I was confused.

Voice: **Motherfucking coon!**

Voice: Uncle Tom!

Voice: Niggers, go home!

Man: I was afraid and alone.

Voice: **Motherfucking coon!**

Voice: Uncle Tom!

Voice: Punk! **Faggot!** Freak!

Voice: Niggers, go home!

Voice: Homo!

Voice: Punk!

Voice: **Motherfucking coon!**

Voice: Uncle Tom!

Voice: Punk! **Faggot!** Freak!

Voice: Homo!

Voice: Niggers, go home!

Man: Cornered by identities I never wanted to claim. I ran, fast, hard. Deep inside myself where it is still, silent, safe. Deception.

Appendix "B"

"PRIVATE LESSONS"

Shown unedited on KZKC, an independent television station, in Kansas City, Missouri on August 28, 1987, at 8:00 p.m. This "R"–rated movie is about a chauffeur and a beautiful young housekeeper (HS) who try to blackmail the 15–year–old son (Philly) of their wealthy employer. The housekeeper, played by a former pornographic movie star, seduces the child and fakes her death during sex with the boy. The chauffeur and housekeeper extort $10,000 from the child while his father is away on business to keep the death of the housekeeper quiet. The following are transcripts and descriptions of some of the movie's most offensive scenes:

HS: Philly, if you want to watch me undress so badly, you should have told me.

Philly: What do you mean?

HS: Well, do you want to watch me undress?

Philly: Well, uhm, sure. I guess so.

HS: Go close the door.

Philly: What?

HS: I said "Close the door."

Philly: I'm not sure I got you right. Did you want me in or out?

HS: Well, did you want to watch me undress?

Philly: I guess so.

HS: Then in.

Philly closes door...

HS: Have a seat.

Philly walks over to chair across from bed where housekeeper is sitting and sits – smiling.

HS: Ready?

Housekeeper begins seductively undressing, first removing her slip, then her garter belt and hose.

HS: You still with me Philly?

Philly: (gulping) Pardon?

HS: Do you still want me to continue?

Philly: (smiling and gulping) Y–Yea! Yes, please.

HS: Not growing bored? Are you sure?

Philly: Oh! Yes!

Housekeeper slowly removes bra, covering first breast with hand, then showing second and then both. Philly is in shock. Camera remains focused on topless housekeeper.

HS: What do you think?

Philly: (gasping) Uh?

HS: My breasts! How do you like them?

Philly: Oh, Nice. Very nice.

Housekeeper walks over to Philly, practically placing her breasts in his face. During most of this scene, the housekeeper's breasts are the camera's main focus.

HS: Well, would you like to touch them?

Philly: Touch them?

HS: Yes.

Philly: (scene shows side view of one breast and Philly's face) No, n–not right now. Thank you.

HS: Are you sure?

Philly: Uh, uh yea. Uhm, maybe later.

HS: Good. But you still want me to continue then?

Philly: (sighing) Yes, please.

Housekeeper slowly walks back to resume undressing and throws Philly her bra. Smiling, he doesn't know what to do with it, so he hangs it on sewing machine. She begins removing her panties. Scenes go back and forth showing her slowly removing panties and him smiling awkwardly. Housekeeper turns around to remove panties, completely exposing nude buttocks, and then turns around again with only her panties in front and then offers Philly her panties.

He gets nervous and begins to leave. The camera continues to focus on her bare buttocks, with Philly visible behind her.

Philly: I-I-I think I-I'd better go now.

HS: So soon? You won't stay?

Philly: N-no, I'm sorry. I-I don't think so.

HS: What a pity. All right. Well, good night Philly.

Philly: Good night a-and thank you, I really enjoyed it.

HS: No, thank you. We should do this again some time.

Philly: Yea, thank you.

As Philly tries to leave, he turns around and runs into door.

* * *

The Housekeeper has invited Philly to her room. Scene opens with Housekeeper taking a bubble bath. Her breasts can be seen through the bubbles during the entire scene.

HS: Come in.

Philly: Hi, uhm, I looked for you in your room and you weren't there. You said you wanted to talk to me.

HS: Come in, Philly, come in

Philly: Uh, what are you doing in my father's bathtub?

HS: Oh, I don't think he would've minded my using his plumbing. Do you?

PhillY: No, no, I guess not.

HS: Would you like to wash my back?

Philly: Well... (Philly walks over to bathtub and bends down and washes her back – smiling. She moves his hand so that he's caressing her breast.)

HS: Would you like to join me?

Philly: Would I like to what?

HS: Take a bath with me?

Philly: You mean in there with you? Right now?

HS: Mmmm, mmm. Why don't you try it? Maybe you'd like it.

Philly: Well–uh, I probably wouldn't even fit in there.

HS: Oh, yes you would. I promise.

Philly: You mean you want me to take off all my clothes and everything?

HS: Do you usually wear them when you take a bath?

Philly: No, not usually.

HS: Oh, come on Philly, I won't even look.

Philly: I–I don't know.

HS: Oh, come on. It'll be an adventure.

Philly: Oh–oh all right.

Philly gets up to leave...

HS: Hey, where are you going?

Philly: To get undressed.

Philly returns in bathrobe...

HS: Well, hello.

Philly: Hi.

HS: Don't you want to take off your robe and join me?

Philly: O.K., just a sec.

Philly removes robe, revealing that he's wearing bathing suit.

HS: Bathing trunks? (laughing) That's marvelous. Won't you take them off?

Philly: No.

HS: Well, all right then. Come in the bath with your bathing trunks.

Philly stumbles into tub.

HS: Be careful, be careful.

Philly sits in front of the housekeeper and she washes his back and then moves her hands to his front.

HS: How does that feel?

She kisses him on the cheek, then again. He turns around to kiss her lightly on the lips.

HS: Are you sure you don't want to take them off?

Philly: O.K. Under one condition.

HS: What's that.

Philly: That we put out the lights.

HS: It's a deal.

Philly gets up to turn out the lights. The housekeeper's breasts again are fully exposed. He returns to bathtub. Somehow Philly's bathing trunks are removed. She caresses him and moves her hands toward his genitals. Philly gasps, jumps out of the tub (naked, nude buttocks showing) and grabs his robe, trying to put it on.

Philly: I–I think I'd better go now.

HS: Philly, wait a second. Wait a second, will you?

Philly: What?

HS: I'm sorry. Will you forgive me?

Philly: O.K.

HS: Prove it.

Philly: How?

HS: By sleeping with me tonight.

Philly: No.

HS: Philly! Why not?

Philly: Well, I've tried it once before in summer camp and I know for a fact that you can't get a good night's sleep if someone is in the same bunk with you. Well, thank you. It's been a lovely evening.

HS: Philly. Just to show there's no hard feelings, would you kiss me goodnight?

Philly: O.K.

Philly gives her a little kiss.

HS: Is it all right if I kiss you good night?

Philly: I guess so.

She gives him a long, deep kiss. Kissing down his neck, caressing his shoulder. He runs away.

* * *

Philly and housekeeper enter bedroom. They talk briefly, then begin kissing and undressing each other. First, her blouse is lowered, revealing her breasts. After she takes his shirt off, the camera focuses on her breasts. Her nipples are clearly erect. She slowly loosens his belt and unzips his pants, then runs her hands up his bare chest. As she walks to the bed, the camera lingers on her naked buttocks. They get into bed. Both are naked. They caress and massage each other, then he rolls on top. She is breathing heavily. Shadows show them moving back and forth in sexual intercourse. She begins to moan and gasp in sexual excitement. One final, loud gasp signals climax, and then she pretends to have died. She lies on the bed with both breasts exposed for several moments as a panicked Philly and the chauffeur discuss what to do.

* * *

In the last scene, the housekeeper is telling Philly goodbye. They kiss on the bed. She removes her blouse, and is topless in front of the camera. They kiss, and he removes his shirt. They kiss passionately. The camera focuses on her breasts. Her nipples are erect as Philly runs his hands over them. She takes Philly's hand and places it on the top of her panties. He pulls her panties off, and she is completely nude. He runs his hands over her bare buttocks and down her leg. He rubs her midriff, then her upper

thighs. She is on her back, naked. She rolls over and kisses him, then gets on top of him and rocks back and forth, with her breasts bouncing on his bare chest. His face is shown as he experiences sexual pleasure. Then she is shown on top, breathing heavily and thrusting. She closes her eyes and moans, presumably in orgasm. The scene closes with them asleep in bed together. This sex scene lasts several minutes.

Appendix "C"

"ONE TRICK PONY"

Shown unedited on the PBS affiliate in Phoenix, Arizona on Thanksgiving night, November 28, 1991 beginning at 11 p.m. Because Friday, November 29 was a state holiday, there was an increased likelihood that children were in the audience. The film, rated "R", follows the career struggles of a musician named Jonah, played by Paul Simon. There are about a dozen uses of the F–word, and several uses of the other "dirty" words listed by George Carlin, in his famous monologue, such as "bullshit" and "pussy" referring to a female's private area. In one early scene, Jonah and a female he just met sit and engage in a lengthy discussion in a bathtub. Both are naked, and the woman's breasts are uncovered and visible throughout the conversation.

In a later scene, Walter, the record company executive, confronts Jonah as he leaves Walter's office.

Walter: Jonah, you wouldn't by any chance be **fucking** my wife? Because that wouldn't be conducive to a good artist–record company relationship.

Next scene, Jonah and Walter's wife are in bed, naked, although covered by a sheet at the beginning of the scene.

Jonah: What was I going to say, "Yes Walter, I am sort of **fucking** your wife"?

Walter's wife: Is that what we're doing, sort of **fucking**?

Jonah and Walter's wife continue talking. She gets up out of bed, completely naked, then walks across the room nude. As the two continue talking and getting dressed, her breasts are completely exposed.

Appendix "D"

THE HOWARD STERN SHOW

Partial transcript from a broadcast on radio station WXRK–FM, New York, New York, on December 16, 1988, between 6:00 – 10:00 a.m.

Here's a guy who plays the piano with his penis. I'll tell you. What a weird crew.

She doesn't give me anything as far as jewelry is concerned. That's because you don't have a penis.

I think it will be worth the whole show just to hear her have an orgasm when I rub my ear.

I understand the doctor (hypnotist) explained that you would not go for that orgasm thing. Like, in other words, that you would not accept it... Boy, you must be difficult in bed. He says he'll hypnotize Bo the Lesbian...and she's a good subject. She's an empty slate.

Bo, you look great. Yes...Bo...getting very aggressive. Bo just rubbed herself in my face. Juliet (one of the naked girls) getting wild. Oh, my God. Diane (another naked girl) is whipping Bo. Good, girls, excellent. The big black lesbian is out of her mind with lust. Look at her. You can't say it on the air? Were you getting excited? Fabulous. All right. That was really good. Best part of the whole Christmas Party.

Appendix "E"

THE GARY DEE SHOW

Partial transcript from a broadcast on radio station WWWE-AM, Cleveland, Ohio, on June 21, 1989, between 2:00 - 6:00 p.m.

Caller: "Gary, I have a comment to make and then I want to tell you what my dream and my goal was for me in life."

Gary: "Excellent."

Caller: "My comment is Lou told me that Chris James gives fellatio okay. Now my dream, ya still there, Gary?"

Gary: "Yeah."

Caller: "Now, my dream is to get in Chris James' pants."

Gary: "Well, why don't you be a man and go down there and say that to her face. You know, you are just like a little kid masturbating in public. You've go no class, you've got no taste."

Appendix "F"

"PLAYBOY"

Excerpts from the October, 1987 issue of *Playboy* which aired on radio station KSD–FM, St. Louis, Missouri on September 28, 1987, at 6:50 a.m.

Hahn: He put his penis in my mouth and I was just starting to cry at that point. Because I couldn't believe...I just started to realize everthing that was happening.

First, of all, I couldn't breathe right. You know, it wasn't...it wasn't...it was just...Emotionally, I couldn't...Everything was like...

It was the very first thing this man did. He has pillows under me. He's sitting like, on my neck. I'm not breathing. I'm feeling sick. The guy is, like, letting loose and I'm choking. O.K. So I'm crying. Tears are coming...

Scheer: What do you mean, he was letting loose?

Hahn: (closing her eyes) The guy came in my mouth.

Appendix "G"

"EROTIC CITY"
Prince
Warner Bros.

A song aired on radio station KLUC–FM, Las Vegas, Nevada, on May 16, 1988, at 7:53 p.m.

ALL OF MY PURPLE LIFE
I'VE BEEN LOOKIN' FOR A DAME
THAT WOULD WANT TO BE MY WIFE
THAT WAS MY INTENTION BABE
IF WE CANNOT MAKE BABIES
MAYBE WE CAN MAKE SOME TIME
FUCK SO PRETTY YOU AND ME,
EROTIC CITY COME ALIVE

WE CAN FUCK INTO THE DAWN
MAKIN LOVE TIL CHERRIES GONE
EROTIC CITY CAN'T YOU SEE
FUCK SO PRETTY YOU AND ME.

EVERYTIME I COMB MY HAIR
THOUGHTS OF YOU GET IN MY EYES
YOU'RE A SINNER I DON'T CARE
I JUST WANT YOUR CREAMY THIGHS

IF WE CAN'T MAKE BABIES
MAYBE WE CAN MAKE SOME TIME
FUCK SO PRETTY YOU AND ME
EROTIC CITY COME ALIVE

WE CAN FUCK INTO THE DAWN
MAKIN LOVE TIL CHERRIES GONE
EROTIC CITY CAN'T YOU SEE

FUCK SO PRETTY YOU AND ME.

WE CAN FUCK INTO THE DAWN
(INTO THE DAWN)
HOW I WISH YOU WERE MY DAME
(REPEAT)
IF YOU CANNOT MAKE BABIES,
MAYBE WE CAN MAKE SOME TIME
FUCK SO PRETTY YOU AND ME
EROTIC CITY COME ALIVE

WE CAN FUCK INTO THE DAWN
MAKIN LOVE TIL CHERRIES GONE
EROTIC CITY CAN'T YOU SEE
FUCK SO PRETTY YOU AND ME.

WOOOOO WOOOO WOOOO WOOOO
BABY YOU'RE SO CREAMY
IF WE CANNOT MAKE BABIES
MAYBE WE CAN MAKE THE TIME
FUCK SO PRETTY YOU AND ME
EROTIC CITY COME ALIVE

WE CAN FUCK INTO THE DAWN
MAKIN LOVE TIL CHERRIES GONE
EROTIC CITY CAN'T YOU SEE
FUCK SO PRETTY YOU AND ME.

IF YOU CANNOT MAKE BABIES,
MAYBE WE CAN MAKE SOME TIME
FUCK SO PRETTY YOU AND ME
EROTIC CITY COME ALIVE

WE CAN FUCK INTO THE DAWN

MAKIN LOVE TIL CHERRIES GONE
EROTIC CITY CAN'T YOU SEE
FUCK SO PRETTY YOU AND ME.

EROTIC CITY...YEA!